

1 RECORD OF ORAL HEARING  
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3 UNITED STATES PATENT AND TRADEMARK OFFICE  
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6 BEFORE THE BOARD OF PATENT APPEALS  
7 AND INTERFERENCES  
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10 *Ex parte* RYUJI ISHIGURO, ITARU KAWAKAMI,  
11 MITSURU TANABE, YUICHI EZURA,  
12 ICHIRO SATO and MUNETAKE EBIHARA  
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15 Appeal 2007-1698  
16 Application 09/869,164  
17 Technology Center 2100  
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20 Oral Hearing Held: October 24, 2007  
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24 Before ALLEN R. MacDONALD, JAY P. LUCAS, and  
25 ST. JOHN COURTENAY, III, *Administrative Patent Judges*.  
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27 ON BEHALF OF THE APPELLANTS:  
28

29 JOSEPH E. WRKICH, ESQUIRE  
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34 The above-entitled matter came on for hearing on Wednesday,  
35 October 24, 2007, commencing at 1:00 p.m., at the U.S. Patent and  
36 Trademark Office, 600 Dulany Street, Alexandria, Virginia, before  
37 Dawn A. Brown, Notary Registration No. 7066896, Notary Public.  
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P R O C E E D I N G S

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2 THE USHER: Calendar Number 27, Appeal 2007-1698. Counsel is  
3Mr. Joseph Wrkich.

4 JUDGE MacDONALD: Let me make sure we have the right spelling  
5for the reporter. W-R-K-I-C-H?

6 MR. WRKICH: That is correct.

7 JUDGE MacDONALD: Thank you. Have you been here before?

8 MR. WRKICH: No, I have not.

9 JUDGE MacDONALD: The way it works is you have 20 minutes by  
10that clock when you start, and begin whenever you're ready.

11 MR. WRKICH: Thank you.

12 JUDGE MacDONALD: If we ask you questions, we'll give you a  
13little bit more time.

14 MR. WRKICH: Okay. An overview of the invention discussed in the  
15specification involves distribution of content data. An example of content  
16data would be a music file. An appendage to that music file or content data  
17is usage condition information. What this is -- this information places limits  
18on the use of the content data.

19 If you look at specifically Claim 26 which was discussed in the appeal  
20brief as representative of the issues pending before us, the invention includes  
21a converter to convert the first format of usage-condition information into a  
22second format, the second format being different from the first format.

23 Why this is being done is that in the context of content distribution,  
24there are many providers of content data. Each of those content providers  
25have a different format for usage-condition information.

1        So rather than manage the plurality of these different formats, the  
2present invention converts all those formats into a common format.

3        And the pending claims were rejected as being anticipated by Benson.  
4Benson discusses three elements: a data package, which includes a data  
5object and control data; a data object with the analogy to our claimed-  
6content data; and the controlled-data defined uses of the data object.

7        In Benson, it is the data object that has its format converted and not  
8the control data. In the examiner's answer, he actually flip-flopped between  
9data package and data object, but if you look at Figure 4 of Benson, in the  
10flow process, Step 408, needs data conversion and Step 409 is converts the  
11data object file format. It is not converting the control data.

12       JUDGE LUCAS: Mr. Wrkich, give me examples, if you would, of  
13what you consider different types of formats for the content, which is the  
14data object, and also give me examples, if you would, of what you consider  
15different formats for the usage data, meaning the using-condition  
16information.

17       MR. WRKICH: The formats of the content data would be MP3 files,  
18WMP players, Windows Media Players; things that play its musical content.  
19The formats of the usage data could be those files as well or other types of  
20data files, like .dat file or some relatively known computer format that would  
21be appended to that.

22       JUDGE LUCAS: I'm trying to think of how -- what you would  
23convert the format of the usage data from; converting something, to  
24something, because usage data doesn't seem to be as well known or as well-  
25established types of formats as the MP3 or WMP or AEI-type formats that

1are for the content. So you said for the usage data, it would be a text file or  
2.dat file?

3 MR. WRKICH: Text or .dat file or, basically, any file that a  
4distributor would have in mind there is a system to process that particular  
5file. Mostly, it is a choice by the content distributor of what file format their  
6equipment is going to process.

7 JUDGE LUCAS: All right. Please continue.

8 MR. WRKICH: I also want to highlight Figure 17 of Benson which  
9actually discloses the data package. And as you can see there, the data  
10package includes the control data and the object data together.

11 Actually, if you go through the process as outlined in the reply, the  
12control data has its format actually converted before that data package is  
13assembled. The control data is not part of the conversion process at all. The  
14object data is converted, control data has been appended to create the data  
15package.

16 I think I've highlighted the issues pending in this file. If there are no  
17further questions, I will yield the remainder of my time.

18 JUDGE COURTENAY: The usage data, as you claimed, is just  
19digital rights management; is that correct?

20 MR. WRKICH: Yes. An example in the specifications is the number  
21of reproductions. If you acquire this data content along with the usage  
22information, maybe you are only allowed to reuse that three times as part of  
23the license between the end user and the distributor of the content.

24 JUDGE LUCAS: Can you give us a bit of a context? Obvious, Sony  
25has some device in mind. The specification was not, perhaps, written in the

1clearest of conventional English language, and I would like to have your  
2concept of what the totality of the invention disclosed is.

3 MR. WRKICH: I think I understand to the extent that I can describe  
4this in general concepts. I can't go into specific plans with Sony products.

5 I think Figure 1 is an overview of the system. In that system, there is  
6a remote server that stores the content, and there is a Personal Computer 1  
7that will actually download the content and manage the usage information.

8 Then there are a variety of sub-devices, maybe MP3 players or other  
9type devices, that you actually check out the content from that PC computer  
10to that personal device, so the user can take that with them.

11 JUDGE LUCAS: I didn't understand -- I was having trouble  
12understanding whether the ultimate user, that is Harry Homeowner, was the  
13one that was going to be owning and controlling the PC from which the  
14various devices would be appended or whether the PC was going to be  
15owned by some distribution company, which would then rent out the  
16individual handheld devices.

17 MR. WRKICH: It is my understanding that the specification is  
18written from the context that the end user would be controlling the PC, but I  
19don't think there is anything in the specification that precludes having an  
20intermediary own that PC then rent out those personal devices.

21 JUDGE LUCAS: I see. Okay. That was just for background.

22 What happens to the temporary package in the event there are two  
23types of data: The header data, which includes the content plus some  
24information about how the format is about to be changed, plus the usage  
25rights data. So there are two separate files.

1 And they mention in Benson that the files are consolidated into some  
2sort of temporary file. I'm looking at Column 8 of Benson near the top.

3 MR. WRKICH: Your question is what happens to the temporary file?

4 JUDGE LUCAS: Right.

5 MR. WRKICH: I think that is explained in Figure 4, Step 414  
6through 415 and through 416. Temporary file is saved, then encrypted. And  
7it is saved as a single file. I think the temporary file is just there as a  
8description of that data as part of that intermediary process.

9 JUDGE COURTENAY: You don't agree that encryption is a form of  
10conversion? When you encrypt something, don't you format it from a first to  
11second format?

12 MR. WRKICH: This was addressed in the initial appeal brief and  
13from the specification, we discussed both the encryption and the data format  
14conversion that we're claiming to the extent that the specification discloses  
15that they're different. We'll rest on that.

16 JUDGE COURTENAY: We're dealing with the scope of the claims  
17here, not the specification.

18 MR. WRKICH: The specification is still going to be interpreted in  
19light of the claims and the claims cannot be construed so broadly that it  
20leaves contrary instruction that a person of ordinary skill in the art would  
21reach.

22 JUDGE MacDONALD: Let me raise an issue that is probably meager  
23with respect to Claim 1. I've looked at it a couple of times, and I have a  
24concern that what I see here is means for receiving, means for converting,  
25and means for transmitting.

1 And the receiving function is not going to change based on the  
2information that is being received, and it is only one type of information  
3being received, so you don't have the content data flowing through these  
4steps.

5 Then it is converted from a first format to a second format, which, to  
6me, doesn't seem to be really relevant to the information that is being used,  
7and then it is going to be transmitted. I'm a little -- I don't see how the  
8using-condition information is going to be anything more than nonfunctional  
9descriptive material in this situation.

10 Really, what we have is means for receiving some kind of  
11information, means for converting it from a first format to a second format,  
12and means for transmitting it.

13 I know the examiner didn't raise this issue, but it appears that there is  
14an attempt here to distinguish this claim solely based on the data content.  
15These appear to be conventional functions that are occurring.

16 MR. WRKICH: Since this issue was not raised earlier, I'm not  
17prepared to fully discuss that issue. If it needs to be further explored, maybe  
18we open prosecution and it can be taken up at that time.

19 JUDGE MacDONALD: Wise answer not to go further. Okay.

20 Any further questions?

21 Thank you very much.

22 MR. WRKICH: Thank you.

23 (Whereupon, the proceedings at 1:13 p.m. were concluded.)  
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